

# **Third United Nations Conference on the Law of the Sea**

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Document:-

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## **31<sup>st</sup> meeting of the Third Committee**

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qualified consent approach, one of the great advantages of which was that it avoided the difficulties surrounding any attempt to distinguish pure and applied research. Later, however, when it had seemed that there was some chance of reaching an agreement based on such a distinction, it had been quite prepared to support a text drafted along those lines. It would also consider its interests to be well protected under article 60 of the revised single negotiating text or the text proposed by the Chairman, or under the new formulation introduced by the representative of Australia. His delegation frankly had difficulty in appreciating the difficulties which some delegations seemed to have with one or all of those texts, and it would have even greater difficulty in understanding a situation in which that issue became a stumbling-block for the whole Conference.

74. Although he could speak only for his own delegation, he had the impression that many others found themselves in a similar position and he therefore hoped that those delegations which had taken very firm positions on both sides of the issue would do their best to ensure that their instructions for the next session of the Conference were sufficiently flexible to permit successful negotiations and an early resolution of the remaining difficulties.

75. Mr. RUIVO (Portugal) said he believed that the difficulties which had arisen were connected with the trends in marine scientific research that had become apparent during the last decade, as a result of such trends, some countries, including his own, recognized the need for effective protection for coastal States. At the same time, it must be borne in mind that such progress as had been achieved on issues related to the sea was due largely to the great efforts exerted in that area by many countries, which had contributed to a fund of knowledge about the sea that now constituted a common heritage of all mankind.

76. Some of the problems facing the Committee were also due to the fact that the issues under discussion were closely related to others still under consideration in other forums of the Conference, including matters relating to the definition of the régime for the economic zone and those covered by article 18.

77. The draft submitted by the Chairman was certainly balanced and realistic, but much remained to be done in order to achieve a generally acceptable solution, and his delegation was prepared to co-operate constructively to that end. Although the new proposal submitted by Australia resolved some problems, it also raised others which in turn would have to be resolved. His delegation was prepared to consider that proposal and any other in the hope of eventually arriving at a solution acceptable to all. Lastly it must be borne in mind that marine science, which at one time had been limited to a single discipline and sector, had become an increasingly multidisciplinary and multisectoral affair; it could be said that the great majority of large-scale research expeditions were now joint undertakings. It was therefore necessary to establish machinery which would facilitate co-operation and the conduct of marine scientific research, thus promoting such research to the greatest possible extent. That had been the aim of the text proposed by his delegation for article 60, which he hoped would be taken into account at the appropriate time.

#### Other matters

78. The CHAIRMAN announced that the delegation of the Sudan had again nominated Mr. Charles Manyang D'Awol for the office of Rapporteur.

*The meeting rose at 1.10 p.m.*

## 31st meeting

Tuesday, 14 September 1976, at 3.30 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

### Report by the Chairman on the Committee's work (continued)

#### *Marine scientific research (concluded)*

1. Mr. FIGUEIREDO BUSTANI (Brazil) said that he wished to make clear his delegation's position concerning certain observations and proposals made after his statement at the 29th meeting. At the 30th meeting the Netherlands delegation had stated that some coastal States had accepted the principle of a distinction between different types of research projects. He assumed that it had been referring to the statements of some delegations, including his own, to the effect that part III of the revised single negotiating text (see A/CONF.62/WP.8/Rev.1)<sup>1</sup> and the Chairman's test proposal submitted at the 29th meeting implied a certain distinction in that respect. Although his delegation had never accepted such a distinction, it was prepared, by way of compromise, to accept a formula, such as the one presented by the Chairman, which would give States carrying on research the opportunity to ascertain whether or not such a distinction was realizable in practice.

2. He welcomed the fact that the delegation of the USSR, a major "research" State, had declared its willingness to accept a régime of absolute consent, all the more so because the USSR delegation had been among those that had submitted the first official proposal establishing a distinction between the different types of research projects. It was his understanding that that change of attitude was due precisely to the fact that no such distinction was possible.

3. Moreover, it was a good thing that the Australian proposal had been circulated informally to delegations for examination. In that connexion, he welcomed the Australian representative's statement to that effect, and was also glad that that representative, whose intelligence, experience of parliamentary diplomacy and sense of timeliness were well known, had not requested the inclusion of his draft in the summary record. He regretted, however, that another delegation had made the inappropriate proposal that it should be included. It was imperative that if the proposal was ever to appear in the meeting records, it should be included on the same basis as the Chairman's test proposal; 10 proposals presented in connexion with article 60 should also be included. He was confident, however, that the Chairman, with his characteristic fairness and impartiality, would be able to find a solution acceptable to his delegation.

4. Mr. LEITZELL (United States of America) recalled that his delegation had originally opposed the principle of consent

<sup>1</sup> See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8).

itself, although it had regarded it as subordinate to the conditions of notification, participation and others, so as to protect coastal States. Nevertheless, at the last session it had agreed, as a possible compromise, to the application of the principle of consent to certain very precise marine scientific research activities, including projects affecting the exploration and exploitation of resources, but only if such application was accompanied by the obligation to submit to mandatory settlement all disputes relating to marine scientific research. A number of delegations had not, however, accepted that suggestion.

5. His delegation deplored the fact that the negotiations on the question of marine scientific research which had taken place during the current session had not in fact resulted in any compromise. It noted with satisfaction, however, that a number of delegations, including the Australian delegation, had made enormous efforts, both informally and formally, to arrive at a compromise. Similarly, it took note of the fact that a number of delegations had found some positive elements in the Australian proposal; that augured well for future negotiations.

6. His delegation wished to assure the Chairman that it would examine any proposal relating to marine scientific research and that it intended to give its full and complete cooperation to future negotiations, in the hope that a final compromise would be arrived at.

7. Mr. TREVES (Italy) commended the Chairman for the efforts he had made during the preceding and current sessions. The revised single negotiating text and the Chairman's test proposal had helped to identify the principal difficulties, even if it had not been possible to resolve them.

8. In his delegation's view, two difficulties continued to exist. Firstly, a decision must still be taken on the régime applicable to marine scientific research in the economic zone and on the continental shelf. The statements of almost all delegations on that question were based on the principle of conditional consent. But those conditions must be stated precisely. In his delegation's view, there were certain types of research which did not call for consent, or at least, for which consent should not be denied if certain prerequisites were satisfied.

9. The second difficulty, a crucial one, involved, on the one hand, the relations between the provisions of part III of the revised single negotiating text and, on the other hand, the relations of those provisions to the convention as a whole—specifically, the relations between article 60 and article 64, between article 60 and the subsequent articles and the relations with the provisions concerning the economic zone, in part II of the revised single negotiating text (*ibid.*), and the régime for the settlement of disputes, which was a subject of part IV of that text (A/CONF.62/WP.9/Rev.1).<sup>1</sup> It followed, at the present stage, that only those proposals which did not affect that interdependence too much would prove useful in the perspective of an over-all solution. For that reason his delegation welcomed the Australian proposal—although it had some reservations with regard to it—because it was proposals of that kind that would provide a promising point of departure for future deliberations.

10. Mr. ATEYA (Kuwait) joined other delegations in commending the Chairman for his efforts and the test proposal he had presented, which constituted a solid basis for negotiations.

11. It was a fact that international relations must be based on good faith. The question was whether the "research" States were acting in good faith. If so, why should they be afraid to ask the consent of the coastal States? It was in the interest of the developing countries and of all mankind to carry on marine research activities, but those activities might affect the security of coastal States, and the latter had the right to withhold their consent.

12. His delegation hoped that all delegations would cooperate with a view to arriving at a solution acceptable to all parties.

13. Mr. MAHMOUD (Mauritania) commended the Chairman for his tireless efforts to resolve the key problem of what consent régime should be applicable to marine scientific research in the economic zone and on the continental shelf.

14. Concerning the part of the Chairman's report which related to article 60, he expressed surprise at the unfavourable reception given that part by those very people who would benefit from it, in view of the fact that guarantees were provided. To his delegation, there was no better guarantee in the matter than the good faith that should characterize relations between States—relations between coastal States and between research States and coastal States, whose rights over the economic zone and the continental shelf (between which there was an unquestionable link) were recognized in the draft convention.

15. Referring to the text of article 60 presented by the Chairman, he said that he would like the adjective "exclusive" to be inserted before the word "jurisdiction" in paragraph 1; the words "prior and explicit" to be inserted before the word "consent" in paragraph 2; the last sentence of paragraph 3 to be deleted; and paragraph 4 to be transferred to paragraph 5 as an additional subparagraph.

16. Mr. KIERZKOWSKI (Poland) commended the Chairman for his report and his efforts to bring about progress in the negotiations.

17. His delegation had originally favoured a régime of complete freedom for marine scientific research. However, in response to criticism from coastal States, his delegation had joined a number of others in preparing a draft article establishing a balance between the interests of coastal States and those of research States. That solution had also been criticized, and therefore his delegation was prepared to accept the revised single negotiating text as a basis for compromise.

18. Although he was surprised to find that some delegations still wanted to make proposals at the present stage, he said that his delegation would make every effort to help arrive at a compromise.

19. Mr. FINUCANE (Ireland) welcomed the compromise that was taking shape after the concessions made by the principal interest groups. The revised single negotiating text had, of course, been criticized, but that was no reason for returning to extreme national positions; it would be desirable to use that text as a point of departure for the work of the next session.

20. Ireland, a coastal State, was in the process of developing its marine scientific research capability and at the same time of protecting its interests in its economic zone and on its continental shelf. For that reason, it was interested in the establishment of a practicable régime for marine scientific research. In that regard, his delegation attached great importance to the principles of qualified consent and tacit consent—as implied in article 64—and to dispute settlement, all of which were essential elements of any régime for marine scientific research and could not logically be considered independently.

21. His delegation welcomed the Australian proposal, which represented a middle ground and might find support from all the interested parties. The successful conclusion of the current session would depend on such initiatives.

22. His delegation hoped that the proposals submitted at the current session would, together with the revised single negotiating text, serve as the starting-point for the next session.

23. Miss AGUTA (Nigeria) commented the diligent, although unsuccessful, efforts of the Chairman to reach a compromise on the question of marine scientific research. No one was responsible for that failure, as the time was perhaps not ripe for reaching agreement.

24. Her delegation noted with satisfaction that all delegations had accepted as a basis for negotiation the draft for

article 60 proposed by the Chairman. Together with the other delegations, it would do its utmost to work out a formula which could be accepted by all parties.

25. Mr. MANYANG D'AWOL (Sudan) said that the Chairman's report constituted a sound basis for negotiations towards reaching a valid solution to the question of marine scientific research. Nevertheless, the Chairman's test proposal was a disappointment to his delegation, in that it implied a distinction between the different kinds of research. Such a distinction was not justified, because the coastal State must give its express consent to the conduct of all marine scientific research projects in the economic zone.

26. Mr. BAKULA (Peru) said he would be interested to hear what had led the Netherlands delegation to assert, albeit in general terms, that a number of developing countries had accepted the principle of a distinction between pure and applied research. That was absolutely not the case, since no valid reason for such a distinction had been given so far.

27. It would be very difficult to accept the suggestion that the Australian proposal should be included in the summary records, since in that case all proposals which were submitted would also have to be included.

28. Mr. BRENNAN (Australia) noted that there was a difference of opinion on whether a valid distinction could be drawn between the different kinds of research—a question which the Committee could not resolve, since it obviously went beyond its terms of reference—and said that his delegation's intention had been precisely to submit a text which made no such distinction.

29. In the case, for instance, of projects which affected the recognized rights of coastal States over their underwater resources, there was unanimous agreement among delegations that coastal States were not opposed to marine scientific research, as they would benefit from it and wanted to encourage it.

30. In keeping with the suggestion made by the Mexican delegation at the preceding meeting, he would like the text which he had distributed informally with a request that no comments should be made on it—although it had in fact been commented on—to appear in the summary record of the 29th meeting of the Committee. Many delegations—both coastal and researching States—had pointed out that it had some positive features.

31. The CHAIRMAN said that he did not think—unless the Committee decided otherwise—that the Australian request could be granted, since the representative of Australia had stated at the 29th meeting that his text was not a formal amendment to or a revision of the single negotiating text. It could, however, appear in the summary record of the current meeting if the representative of Australia wished to submit it formally.

32. Mr. MBOTE (Kenya) said he would like to make one or two further comments on the procedural question which had been raised at the preceding meeting by the representative of Mexico and been commented on by the representatives of Brazil, Peru and Australia. Although the Chairman had stated on several occasions that manoeuvres were out of place in the Committee, what was now going on could only be described as a manoeuvre. When the representative of Australia had made his proposal, he had clearly indicated that it was an informal one and that he did not expect the Committee to discuss it. To include the full text of the Australian proposal in the summary record would have unfortunate consequences, since anyone who had not participated in the debate might think on reading the summary records for the current session, that the Australian proposal and the Chairman's proposal had been the only ones submitted during the session. He was not opposed to the inclusion of the Australian proposal verbatim in the summary record, but he felt that in that case all the other proposals which had been made should also appear there. His delegation in particular would like to submit a formal proposal and request that it should be reproduced verbatim in the summary record.

33. The CHAIRMAN urged members to refrain from making any proposals which might not only cause procedural complica-

tions but also affect the future consideration of the various proposals. At the 29th meeting, the representative of Australia had made an informal proposal which he had requested members to consider in private. At the current meeting, the Chairman had decided not to call to order those representatives who wished to comment on the Australian proposal—which they had acknowledged was informal—because members of the Committee could not be expected to disregard that part of the statement of the representative of Australia in which he had read out his proposal. If the Australian delegation wished its proposal to appear verbatim in the summary record, it should formally so request at the current meeting. The proposal would then be reproduced in the summary record of the current meeting, but it could certainly not be inserted retroactively in the summary record of the 29th meeting. In any event, he thought that that would be an unfortunate procedure, and he urged the representative of Australia to reconsider his position.

34. Mr. BRENNAN (Australia) said that he did not intend to contest the Chairman's ruling. However, he should perhaps explain that the reason why his delegation had requested at the 29th meeting that the proposal should not be discussed in the Committee was that some delicate consultations had still been going on and it had wanted to avoid a premature debate which might have reduced the chances of success for a promising proposal. As those private consultations had now been concluded, he was ready to hear any comments which members might have on his delegation's proposal. He would also like to explain that his delegation, in requesting that the text of its proposal should be reproduced verbatim in the summary record, was not making unreasonable demands. Since the summary records of both the current meeting and the 29th meeting would reflect the comments of delegations on the Australian proposal, it was only fair that the text of the proposal should also be reproduced. He therefore urged members not to oppose the inclusion of the full text of his proposal in the summary record of the current meeting.

35. The CHAIRMAN pointed out to the representative of Australia that his proposal was not the only informal one on which comments had been made. If the Australian delegation pressed its formal request for the inclusion of its proposal verbatim in the summary record, other delegations could be expected to do likewise.

36. Mr. BRENNAN (Australia) said that, nevertheless, he would again urge the members of the Committee to accede to his request and not to oppose the inclusion of the text of the Australian proposal in the summary record of the current meeting.

37. The CHAIRMAN said he would like to hear the views of members in order to clarify the situation and avoid an unnecessary procedural debate.

38. Mr. CROSBY (Ecuador) said that he deeply regretted the current incident, which could undo all the Chairman's efforts throughout the session to ensure that harmony and understanding prevailed among the members of the Committee. Since, however, the Committee had before it a request by Australia, he felt obliged to state his position on the matter. His delegation was opposed to the request made by the representative of Australia, for many reasons. Firstly, he would point out that all delegations had taken an equal part in the deliberations of the Conference and that the delegations representing the countries of the Group of 77, in particular, had expended quite as much effort as the Australian delegation. For example, four countries, including Ecuador, had actively sought a compromise formula and had submitted, in a spirit of conciliation, an informal proposal which had received the support of a large number of delegations. Moreover, his delegation felt that the Australian representative had no right whatsoever to maintain that his proposal was the result of negotiations held within the framework of the Committee. If such consultations had taken place, they had not conformed to

the procedure laid down by the Committee, which provided that all its members should participate: his delegation had not taken part in them and had not even been informed that they were being held. That being the case, the Australian proposal could not be considered a negotiated formula or a basis for negotiation and must remain an informal document. His delegation recognized, however, that the Australian delegation had the right to submit that proposal as a document reflecting the position of the Australian Government. However, if the text of that proposal were to appear in the summary record of the current meeting, he would request that the informal proposal which he himself had submitted together with three other delegations should also be reproduced in the record. He also requested officially the deletion of article 64 of the revised single negotiating text.

39. The CHAIRMAN urged the representative of Australia to reconsider his position and suggested that the representative of Ecuador should not formulate his own proposal before learning the final decision of the Australian delegation.

40. Mr. CROSBY (Ecuador) said that he was willing for the moment to refrain from submitting his proposal but reserved the right to submit subsequently any proposal he considered useful.

41. The CHAIRMAN said he hoped that the question would be settled amicably and once again asked the representative of Australia whether he was willing to reconsider his decision. He also wished to remind him that the Australian delegation had been present at all stages of the informal negotiations and had therefore been familiar with all the proposals which had been submitted and discussed. If it had submitted its proposal during the informal negotiations, that proposal could have been included in the Chairman's report.

42. Mr. BRENNAN (Australia) said that he was prepared to withdraw his proposal. He wished to point out, however, in reply to the comment just made by the Chairman, that the reason his delegation had not submitted its proposal during the informal consultations had been that that proposal had not yet, at that time, elicited sufficient interest on the part of the other delegations and because the private consultations had not yet led to tangible results. He pointed out to the representative of Ecuador that his delegation's proposal had been formulated not within a group but following bilateral consultations between his and other delegations.

43. The CHAIRMAN thanked the representative of Australia for the understanding he had just shown and assured him that all proposals, including the Australian proposal, would be duly studied. The fact that 50 representatives had spoken on the question was evidence of the importance which the members of the Conference attached to the régime governing marine scientific research. The debates had highlighted the progress made and the problems which were still pending and would have to be taken up again. Exchanges of views had also made it possible to identify the areas of possible agreement and the different options which were available to the Third Committee. As to article 60, he was of the opinion that the problems posed by that article required a political solution. In order to attain it, the various trends which had emerged would have to be reconciled. The views expressed and the suggestions made during the current session should also be studied before the next session. He felt, however, that the progress made since the beginning of the Conference should not be overlooked. Although there were still divergences of opinion, areas of agreement had none the less emerged. Modest though they were, the results achieved at the current session could not be ignored. Although no definitive measure had been adopted, no one could deny that genuine negotiations had begun. During the following phase, questions relating to marine scientific research would have to be considered on a global scale, with the problems inherent in that field viewed as part of the general context. The régime applicable to the conduct of marine scientific research activities, which was the

subject of article 60, should not be studied in isolation. He was convinced that a compromise would be reached and that the efforts to reach general agreement would lead to tangible results. He then thanked Mr. Metternich, who had played an invaluable role throughout the negotiations, and all the members of the Committee.

#### *Transfer of technology*

44. The CHAIRMAN said that, on transfer of technology, the Committee had held two informal meetings under his chairmanship and two meetings of a smaller group chaired by Mr. Metternich. Since the participation of the International Sea-bed Authority in the transfer of marine technology had proved to be one of the key issues, those meetings had concentrated on articles 85 and 86 of chapter III of part III of the revised single negotiating text.

45. Delegations had shown keen interest in the matter: 130 statements had been made during the course of those discussions, and 10 amendments to article 85 and 8 to article 86 had been submitted. Reference had also been made to a number of other articles, in particular articles 79, 84 and 89. One amendment to article 78 had been submitted, and it had been suggested that a new article should be added on the question of co-operation of States with competent international organizations in the field of transfer of technology. Reference had also been made to part I of the revised single negotiating text (see A/CONF.62/WP.8/Rev.1), in particular to article 11 and to annex I, paragraph 10, concerning the role of the Authority in the transfer of technology.

46. With regard to article 85, some amendments had sought to strengthen the role of the Authority by giving it a co-ordinating role in transfer of technology in the international area. Other amendments had been intended to link the role of the Authority in the transfer of technology to the deliberations on the scope of the Authority taking place in the First Committee.

47. The amendments to article 86 had dealt mainly with the reference to particular interests such as rights and duties of holders, suppliers and recipients of technology, and the establishment of an over-all system of co-ordination and a joint international fund for activities of the Authority in the field of transfer of technology. The role of the International Sea-bed Authority as mentioned in articles 85 and 86 had led some delegations to suggest the deletion of both articles.

48. During the discussions, it had been suggested that a procedural device should be found for facilitating co-ordination between the First and Third Committees in order to deal with the substantive issues raised by articles 85 and 86.

49. The amendments submitted and the different views expressed on articles 85 and 86 would certainly be of help in finding a solution to the problems they raised and would thus facilitate a final agreement on the chapter on transfer of technology. He had the impression that the proposed amendments to articles other than those which he had just mentioned did not represent substantial difficulties and would not deter the acceptance of the proposed text.

50. Mr. AL-HAMID (Iraq) said that the utilization of sea-bed resources depended to a large extent on marine technology, which the developing countries particularly needed. The transfer of technology to those countries should be carried out on reasonable terms, with due regard to the situation of the recipient countries, their different levels of development and their capacity to absorb technology. The developed countries should transfer marine technology to the developing countries on the basis of equality and justice, without making that transfer subject to any obligations or restrictions. The Committee should take into consideration the need to entrust to certain international organizations, particularly the Authority the task of overseeing the development and transfer of marine technology, especially as it related to the exploitation of the water column and the sea-bed.

51. His delegation did not oppose the proposed amendment to article 85 which would add a reference to part I of the convention; likewise, it was in favour of an amendment to the introductory sentence of article 86 which would delete the second part after the word "interests" and of the other amendments required to bring the text into line with the needs of the developing States and the obligation of the Authority to respond to those needs.

52. Mr. HAQ (Pakistan) said that articles 85 and 86 posed a major problem for his delegation, a problem which it had raised at the informal meetings. Furthermore, article 87, according to which the International Sea-bed Authority and international organizations were required to promote the transfer of technology, was ambiguous. Did the article refer only to marine technology relevant to the international zone? If so, it should be remembered that the technology in question represented a very specialized field and had been derived from technology developed in shallow waters. In fact, no international organization was currently engaged in the exploitation of the sea-bed in regions other than those within the territorial sea or the economic zone. His delegation therefore thought it necessary to consider the possibility of making the Authority responsible for providing coastal States with deep-water technology so that they could use that technology within the territorial sea and the economic zone, since it was in those areas that developing countries would need the technology first of all.

53. His delegation felt that several amendments could be made to other articles concerning the transfer of marine technology and reserved the right to submit such amendments at the next session.

54. Mr. McKEOWN (Australia) said that his delegation, which had already made known its views on the subject at the informal meetings, supported articles 85 and 86 and fully endorsed the goals of the transfer of technology as described by the representative of Iraq. However, his delegation doubted that the amendment proposed by the representative of Iraq to delete the second part of the introductory phrase of article 86 would help achieve the desired result. His delegation thought it important to retain the reference to the rights and duties of holders and suppliers of technology, not only in the interest of those holders and suppliers but also in the interest of recipients. If the reference was deleted, the International Authority might not fully recognize those rights; and that would inevitably impede the transfer of technology. The acquired rights of holders and suppliers of technology must therefore be recognized and protected if the transfer of technology was really to be encouraged.

#### *Protection and preservation of the marine environment*

55. The CHAIRMAN, introducing his report on the protection and preservation of the marine environment, said that, in his opinion, the revised single negotiating text was a well-balanced document which served as a useful basis for negotiation on that subject. That opinion was apparently shared by most delegations. Throughout the session, he had tried to establish common ground for the opposing points of view and to improve the clarity and presentation of critical articles. It gave him great satisfaction to report that, during the fifth session, the Third Committee had made significant progress towards the elaboration of a set of draft articles on the protection and preservation of the marine environment. The amendments and compromise formulas which had received broad support during the session would be taken into account in the course of future work and would make it possible to improve the revised single negotiating text. Many provisions of that text, including those relating to vessel-source pollution, were the result of extensive negotiations at previous sessions of the Conference, particularly at Caracas, and could be considered not only as a basis for negotiations but also as a result of negotiations. Delegations had the right to improve

those articles and to submit amendments, but it was to be hoped that such efforts would not affect the balanced compromise achieved through the strenuous work of all delegations.

56. In accordance with its decisions concerning the organization of work, the Committee had concentrated its efforts on key issues related to vessel-source pollution; however, it had also been flexible enough to take note of such suggestions and comments as delegations had deemed appropriate with regard to other aspects of marine pollution. On the whole, the basic concepts reflected in the revised single negotiating text had received very wide support, and most of the proposals were intended to clarify the text and to remove ambiguities wherever necessary.

57. In the course of 13 informal plenary meetings, the Committee had examined the provisions of those articles primarily concerned with vessel-source pollution. Thus, in connexion with the competence of coastal States to establish national laws and regulations for the prevention and control of vessel-source pollution in the territorial sea, the Committee had made a joint study of article 21, paragraph 3, of part III and article 20 of part II of the revised single negotiating text. Recognizing a link between those two provisions, the Committee had considered proposals to include in article 21, paragraph 3, a clearer cross-reference to part II of the revised single negotiating text and to alter article 20, paragraph 2, of part II. The Committee had then examined the legislative powers of the coastal State regarding the prevention and control of vessel-source pollution in the economic zone, taking account of the provisions of article 21, paragraphs 4 and 5, of part III of the revised single negotiating text.

58. The Committee had also considered the issues relating to the enforcement of applicable laws and regulations by the flag State, port State and coastal State, as well as the closely related question of safeguards, as reflected in articles 27, 28, 30 and 38 of part III of the revised single negotiating text. The Committee had completed two readings of the provisions concerning vessel-source pollution and had then referred the outstanding issues, namely, articles 21, 27 and 28 and article 30, paragraphs 1 to 7, to a negotiating group for further and more specialized study.

59. As for the other issues connected with the preservation of the marine environment, the Committee had considered observations and amendments made during the discussions. Since all the proposed amendments had been distributed, he considered it unnecessary to refer to them at that stage, but he nevertheless wished to mention the articles with regard to which amendments had been submitted and which must be the subject of further study by the Third Committee, namely, articles 7 to 11, 14, 17, 19, 20, 21 (1), 21 (2), 21 (4), 22, 26, 29, 33, 35, 36, 40, 41, 42 and 44. In most cases, the amendments involved questions of drafting.

60. A negotiating group, under the chairmanship of Mr. Vallarta, had been entrusted with the further study of questions concerning vessel-source pollution, and he wished to inform the Committee of the results of those negotiations and to raise some questions which would, in the future, require the special attention of the Committee.

#### *Article 21, paragraph 3*

61. The negotiating group had agreed that there was an obvious link between article 21, paragraph 3, of part III of the revised single negotiating text and article 20, paragraph 2, of part II. It had been asserted that the two articles were contradictory, since article 20, paragraph 2, of part II eroded the sovereignty recognized under article 21, paragraph 3, of part III. Another delegation had expressed the view that article 20, paragraph 2, of part II was a necessary complement to article 21, paragraph 3, of part III and an indispensable safeguard for the right of innocent passage. Delegations were apparently prepared to divide article 20, paragraph 2, of part II into two parts, and it would therefore be necessary to co-ordinate part

II and part III of the negotiating text in that respect. Article 20 of part II would certainly not be consistent with the provisions of part III—which gave coastal States the right, within their economic zone, to establish laws and regulations for the prevention and control of vessel-source pollution—if it did not recognize a similar right within the territorial waters, a right which, in the view of many, the coastal State must enjoy as an expression of its sovereignty.

62. He believed that the mandate of the Third Committee enabled it to participate fully in the co-ordination of all issues connected with marine pollution, regardless of which Committee had originally drafted the corresponding articles. With respect to article 20 of part II, delegations must decide whether that article gave coastal States the right to regulate such matters as minimum under-keel clearance for vessels, traffic management and compulsory pilotage.

#### *Article 21, paragraph 5*

63. The negotiating group had agreed on a text for article 21, paragraph 5, concerning special areas within the economic zone, but some delegations had wished to record their general reservations with regard to that text. The text read as follows:

“Where international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and where coastal States have reasonable grounds for believing that a particular, clearly defined area of their economic zone is an area where, for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources, and the particular character of its traffic, the adoption of special mandatory methods for the prevention of pollution from vessels is required, coastal States, after appropriate consultations through the competent international organization with any other countries concerned, may, for that area, direct a communication to the competent international organization, submitting scientific and technical evidence in support, and information on such necessary reception facilities which have been established. The organization shall, within twelve months after receiving such communications, determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, coastal States may, for that area, establish laws and regulations for the prevention, reduction and control of pollution from vessels, implementing such international rules and standards or navigational practices as are made applicable through the competent international organization for special areas. Coastal States shall publish the limits of any such particular, clearly defined area, and laws and regulations applicable therein shall not become applicable in relation to foreign vessels until twelve months after the submission of a communication to the competent international organization. Coastal States, when submitting their communication for the establishment of a special area within their economic zones, shall at the same time notify the competent international organization if it is their intention to establish additional laws and regulations for that special area for the prevention, reduction and control of pollution from vessels. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards and shall not become applicable in relation to foreign vessels until twelve months after notification to the competent international organization and provided the organization within that time agrees.”

#### *Article 27*

64. The proposals to amend paragraph 1 of article 27 had been withdrawn. The negotiating group had accepted, without

changes, the text of that paragraph as it appeared in the revised single negotiating text.

65. The negotiating group had also accepted amendments to paragraphs 2, 3, 6, 7 and 8 of article 27. He would read out the amendments and the amended texts of those paragraphs.

#### *Article 27, paragraph 2*

66. The amended text would read:

“Flag States shall, in particular, establish appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing until they can proceed to sea in compliance with the requirements of international rules and standards referred to in paragraph 1 for the prevention, reduction and control of pollution from vessels, including the requirements in respect of design, construction, equipment and manning of vessels.”

#### *Article 27, paragraph 3*

67. The amended text would read:

“States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. Flag States shall ensure that their vessels are periodically inspected in order to verify the conformity of such certificates with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessel and regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.”

#### *Article 27, paragraph 6*

68. The amended text should read:

“Flag States shall, at the written request of any State, investigate any violation alleged to have been committed by their vessels. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay cause such proceedings to be taken in accordance with their laws.”

#### *Article 27, paragraph 8*

69. The amended text would read:

“Penalties specified under flag States’ legislation for their own vessels shall be adequate in severity to discourage violations wherever the violations occurred.”

#### *Article 27 (proposed new article)*

70. With regard to the proposal to add a new paragraph to article 27 that would refer to the admission of evidence by the courts of another State, the negotiating group reached the understanding that article 33, which dealt with that question, would be transferred to section 7 as a separate article.

#### *Article 28*

71. The negotiating group had accepted some amendments to paragraph 1 of article 28. However, it had been unable to resolve all the issues raised by that article. The amendments accepted by the group were the following.

72. At the beginning of paragraph 1 the words, “other internal waters” should be added after the word “port”, and at the end of the paragraph the words “irrespective of where the violation occurred” should be replaced by “outside the internal waters, territorial sea, or economic zone of that State”.

73. The group had not succeeded in resolving the issues raised by paragraph 2 of article 28.

74. The group had agreed on the following text for paragraph 3 of article 28:

“A State, whenever a vessel is voluntarily within one of its ports, other internal waters or off-shore terminals, shall, as far as practicable, comply with requests from any State for investigation of violations of international rules and standards referred to in paragraph 1, believed to have occurred in, damaged or threatened the internal waters, territorial sea or economic zone of the requesting State, and likewise shall, as far as practicable, comply with requests from the flag State for investigation of such violations, irrespective of where the violations occurred.”

75. The negotiating group had been unable to resolve the various issues related to paragraph 4 of article 28. It had decided to reconsider paragraphs 2 and 4 of that article when it had the opportunity to study article 30.

76. In conclusion, he expressed satisfaction that the Committee had been able, on the basis of the revised single negotiating text, to narrow differences and eliminate certain

ambiguities and provisions which had given rise to controversy, but he noted that important issues remained to be settled. In addition to the question of harmonizing parts II and III of the single text with respect to coastal State competence in the territorial sea, it would be necessary, *inter alia*, between the current session and the forthcoming one, to determine the civil or criminal nature of proceedings to be taken by the port State, the universal character of port State jurisdiction and the degree of acceptance needed for the establishment and application of international rules and standards. He was convinced that continued co-operation and concentrated efforts by the Committee to improve the revised single negotiating text at the next session would place the common goal within reach.

*The meeting rose at 6.25 p.m.*

## 32nd meeting

Wednesday, 15 September 1976, at 10.55 a.m.

*Chairman:* Mr. A. YANKOV (Bulgaria).

### Report by the Chairman on the Committee's work (continued)

#### *Protection and preservation of the marine environment (continued)*

1. The CHAIRMAN recalled that, in accordance with the decision taken on the previous day, the current meeting would be devoted to hearing comments and suggestions regarding the oral report he had made at the preceding meeting on the protection of the marine environment. In his report, he had attempted to provide a factual summary of what had been achieved to date at the current session, stressing points on which there was agreement and the issues which still presented problems. Obviously, there might have been some inadvertent omissions in his presentation and there might be some points requiring clarification. He left it to the members of the Committee to assess what had been done so far. The Committee's chief concern at the current stage should be to work with a view to the future, bearing in mind what could be achieved at the next session of the Conference.

2. Mr. TIKHONOV (Union of Soviet Socialist Republics) said that the Chairman's oral report clearly and faithfully reflected the discussions which had taken place in the Committee.

3. The session which was about to end showed that most delegations viewed part III of the revised single negotiating text (see A/CONF.62/WP.8/Rev.1)<sup>1</sup> prepared by the Chairman as a compromise text which should be taken as a package. One of the positive aspects of the preceding session had been that virtually all delegations had expressed willingness to participate in negotiations aimed at finding generally acceptable solutions. That had made it possible to resolve differences and secure wider support for the revised single negotiating text. Of course, it had not been possible to reach agreement on all the points in that text either in the Committee or in the negotiating groups; a case in point had been

article 21, paragraph 3. Nevertheless, there was reason to hope that on continuing its work, the Committee would manage to settle outstanding issues and find solutions through negotiations.

4. However, his delegation would not wish anyone to conclude that the provisions contained in the revised single negotiating text pertaining to vessel-source pollution of the marine environment reflected the national position of the Soviet Union. In order to accept some points in the negotiating text, the Soviet Union had had to depart considerably from its position of principle regarding the jurisdiction of coastal States and port States.

5. It had been proposed that the powers of the coastal State should be broadened when it had been decided that in certain areas of the economic zone national laws and standards designed to stop vessel-source pollution of the marine environment could be applied. In the view of his delegation, such provisions should be included in future only if safeguards were also incorporated ensuring that there would be no abuse of the extensive rights granted to port States and coastal States. In that connexion, his delegation attached great importance to section 8 of part III of the revised single negotiating text pertaining to safeguards. However, the introduction into the text of exemptions or similar provisions which weakened the section on safeguards would make not only part III of the revised single negotiating text but the text in its entirety unacceptable to his delegation.

6. With regard to future work, his delegation felt that the most sensible course would be to conclude, at the next session, consideration of all of the provisions of the revised single negotiating text pertaining to vessel-source pollution of the marine environment. In that connexion, articles 30 and 38 should be kept very much in mind and, if time permitted, the amendments to other articles in that part of the text should be studied. In those future deliberations, it would be appropriate to continue to apply the methods followed so far, dealing with the articles and amendments in the Committee and in the negotiating groups, and using all other possible methods of consultation and discussion.

<sup>1</sup>See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.B).